THE ISLAMIC SOLUTION TO FAMILY DISPUTES
& WHY THE RIGHT OF DIVORCE TO THE HUSBAND?



MOULANA ATEEQ AHMAD BASTAWI, LUCKNOW | INDIA



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بسم الله الرحمن الرحيم

In the name of Allah, most gracious, most merciful

Title : THE ISLAMIC SOLUTION TO FAMILY DISPUTES & WHY THE RIGHT OF DIVORCE TO THE HUSBAND?

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Date :

بسم اللہ الرحمن الرحیم

بھارت کی آزادی کے بعد آزاد بھارت کا جو دستور بنایا گیا اُس میں اس ملک کو سیکولر (secular) ظاہر کیا گیا، جس کا مطلب ہی یہ ہے کہ: بھارت کا کوئی سرکاری مذہب نہیں ہے؛ بلکہ ملک کا دستور ہر مذہب کو عزت واحترام کی نگاہ سے دیکھتا ہے، اور اس کے ماننے والوں کو اپنے مذہب پر چلنے کی مکمل آزادی دیتا ہے۔ آزاد بھارت کے دستور میں یہاں کے شہریوں کے لیے جن بنیادی حقوق کو تسلیم کیا گیا ہے اور ان کی حفاظت کی گارنٹی دی گئی ہے، اُن میں سے ایک مذہبی آزادی بھی ہے، اور ان ہی بنیادی حقوق کے ضمن میں اس بات کی صراحت کی گئی ہے کہ: حکومت کوئی ایسا قانون نہیں بنائے گی جس کے ذریعہ یہ بنیادی حقوق ختم ہوجاتے ہوں یا اس میں کمی آتی ہو، جو قانون اس کے خلاف بنے گا وہ اپنی مخالفت کی حد تک رد اور باطل قرار دیا جائے گا۔

ان ہی بنیادی حقوق کے ضمن میں ہر شہری کو اپنی الگ تہذیب کو محفوظ رکھنے کی گارنٹی بھی دی گئی ہے، اور ہندوستان میں بسنے والے تمام مذاہب کے لوگوں کو مکمل مذہبی آزادی حاصل ہے کہ وہ اپنے اپنے مذہب پر آزادی کے ساتھ عمل کر سکتے ہیں، حکومت اس میں کوئی دخل اندازی نہیں کرے گی، اور نہ ہی کوئی ایسا قانون بنائے گی جس کی وجہ سے بذریعہ دستور دیے گئے حقوق پر زد پڑتی ہو۔

اس کے باوجود حکومتوں کی طرف سے ”مسلم پرسنل لاء“(FAMILY LAW) میں تبدیلی اور یونیفارم سول کوڈ تیار کرنے کی باتیں بار بار دوہرائی جاتی ہیں، اسی ضمن میں وہ حلف نامہ (AFFIDAVIT) ہے جو چند دن پہلے موجودہ حکومت کی طرف سے سپریم کورٹ میں داخل کیا گیا، جس میں سپریم کورٹ سے درخواست کی گئی ہے کہ: وہ تین طلاق اور نکاح حلالہ کو باطل قرار دیں اور تعدُّدِ ازواج پر پابندی لگائے، اسی بنیاد پر اس وقت ملک میں جو گرما گرم بحثیں ہورہی ہیں اور میڈیا (جس کو بڑے منظم طریقہ پر ”مسلم پرسنل لاء“ کے خلاف ذہن سازی کے لیے استعمال کیا جارہا ہے) کی طرف سے جو مضامین شائع کیے جارہے ہیں، اُن میں ”طلاق کا اختیار مرد کو کیوں دیا گیا؟“ اس نکتہ کو خوب اچھالا جارہا ہے، اور مضمون نگار حضرات یہ باتیں جس انداز سے پیش کرتے ہیں ان کو پڑھ کر مسلمانوں کا اچھا خاصہ طبقہ شکوک وشبہات کا شکار ہوجاتا ہے، ضرورت تھی کہ اس مسئلہ کو واضح کیا جائے۔ حضرت مولانا عتیق حمد صاحب بستوی زید مجدہم (استاذ دار العلوم ندوۃ العلماء لکھنؤ) نے اپنی ایک تحریر میں اس اعتراض کا جو تجزیہ فرمایا وہ ان سب شکوک وشبہات کو دور کرنے ں بڑا موثر ہے؛ اس لیے مناسب معلوم ہوا کہ اُن کی اس تحریر کا انگریزی میں بھی ترجمہ کر کے شائع کیا جائے۔ اس اہم فریضہ کی انجام دہی کے لیے احقر نے عزیز مکرم مولانا مفتی ابراہیم دیسائی صاحب زید مجدہم (شیخ الحدیث مدرسہ نعمانیہ ڈربن اور مشہور اسلامی اسکالر) کو درخواست کی، الحمد للہ انھوں نے بری اس درخواست کو قبول کرتے ہوئے فوری طور پر یہ کام انجام دیا۔ اللہ تعالیٰ ان کے علم وعمل میں برکت عطا فرمائے۔

مسلمانوں۔ اور خاص کر وہ طبقہ جو اس طرح کے شکوک وشبہات کا شکار ہوجاتا ہے۔ کی خدمت میں یہ تحریر اس امید کے ساتھ پیش کی جارہی ہے لہ: اس کو پڑھ کر ان کے ایمان ویقین میں اضافہ ہو۔ اللہ تعالیٰ ہم سب کو ایمانی قوت وغیرت عطا فرمائے۔ آمین

أملاہ: احمد خانپوری

۱۷ر محرم الحرام ۱۴۳۸ھ ۱۹ر اکتوبر ۲۰۱۶ء

Foreword

(TRANSLATION OF THE FOREWORD)
BY WORLD RENOWNED MUFTI AND SPIRITUAL GUIDE,
THE PRIDE OF INDIA,
MUFTI AHMED KHANPURI SAHIB

The Constitution of India that was drawn after India's independence declared the country a Secular State. The meaning of which is that India does not have a State religion. Rather, the Constitution of the country views every religion with honour and dignity, and allows its adherents to practice upon their religion freely.

In the Constitution of independent India, amongst the basic rights that it has granted and guaranteed its citizens, is the right of religious freedom. It is during the discourse of these fundamental rights that the following point has been mentioned:

"The Government shall not pass a law which takes away or infringes these fundamental rights. If it makes a law which opposes these fundamental rights, it shall, in view of its opposition [to these fundamental rights], be rejected and declared null."

It is also from amongst these fundamental rights that every citizen was guaranteed that his way of life would be protected. Also, all the citizens of India that adhere to a religion shall have complete liberty to practice their religion freely;

the Government shall not interfere in this whatsoever and shall not pass any legislation which infringes upon any of the rights given by the Constitution. Despite all this, the Government continuously discusses changing the Muslim Personal Law and implementing the Civil Uniform Code.

In the same breath, a few days ago, the current Government filed an affidavit to the Supreme Court which requested to the Supreme Court that: it should abolish the notion of three divorces and a halālah marriage and that it should restrict the act of polygamy.

Due to this, from amongst the fierce discussions taking place across the country and subjects being put forward by the media (which is strategically being used to create a negative impression of the Muslim Personal Law), is the discussion: "why do men have the sole of right of divorce?" This issue is being propelled with great momentum.
The instigators of these discussions put forward their arguments in such a manner that many Muslims have become prey to doubt and confusion. Thus, there was a need for this issue to be clarified.

Moulana Atiq Ahmad Bastawi Sahib (lecturer at Darul Uloom Nadwatul Uloom, Lucknow) – May Allah increase him in splendour – has in one of his treatises analyzed this claim in a way that it is very effective in dispelling any doubts or confusion.

I felt that it would be appropriate to translate this treatise into English and distribute it.

I requested the honourable and respected Moulana Mufti Ebrahim Desai Sahib – May Allah increase him in splendour - (senior lecturer of Hadith at Madrasah Numaniyyah, Durban and a world renowned scholar) to undertake this important task. Alhamdulillah, he immediately set upon to fulfil my request. May Allah bless him in knowledge and practice.

Therefore, this treatise is being presented to the Muslims in general and more so those who fall prey to doubts and confusion with the hope that it may increase them in their faith and conviction.

May Allah grant us all strength in Imān.

Written by: (Mufti) Ahmed Khanpuri
17th Muharram, 1438 A.H.
19th October, 2016.

Translators Note

I have been advised by my most revered teacher and spiritual guide, Hadhrat Mufti Ahmad Khanpuri Sahib (مد ظله) to translate the book (عائلی تنازعات کا شرعی حل اور شوہر کو حق طلاق کیوں) as a matter of urgency. It is indeed very challenging to translate such intricate academic topics in a short period of time.

We have endeavoured to maintain the message of the subject matter rather than a strict literal translation.

[Mufti] Ebrahim Desai

In Islam, marriage is not a temporary enjoyment. Rather, it is a respected and honored bond of love and affection between two people which has to be revered and preserved till death. This is why Islam has emphasized to each partner to fulfil the rights of the other and has taught each partner to overlook the mistakes of the other with the objective of maintaining this sacred bond of marriage.

Women have been commanded to obey their husbands in all permissible acts. In doing so, they have been given the glad tidings of paradise. There are many narrations of the Prophet Sallallahu 'Alaihi Wasallam in this regard:

1) Hadhrat Umm Salamah Radhiyallahu 'Anha narrates that the Prophet Sallallahu 'Alaihi Wasallam said: "If a woman dies in a state wherein her husband was pleased with her, she shall enter Jannah."[Sunan Tirmidhi Pg. 457, Vol 2. Hadith 1161 Daral Gharbil Islamiy, Beirut 1998 edition]

2) It is narrated on the authority of Hadhrat Anas Radhiyallahu Anhu that the Prophet Sallallahu 'Alaihi Wasallam said: "A woman shall have the honor of entering Jannah from whichever door she pleases if she performs her five times prayers, fasts during the month of Ramadhan, safeguards her chastity and is obedient to her husband."[Hilyatul Awliya Pg. 308. Vol 6. Darul Fikr. Beirut. Fourth impression.]

3) Hadhrat Abu Usamah Radhiyallahu Anhu narrates that the Prophet Sallallahu 'Alaihi Wasallam said:

"A Muslim does not get a greater bounty after attaining consciousness of Almighty Allah than the bounty of a pious wife who exhibits the following characteristics; she accedes to his directives, she makes him happy when he sees her, and if the

husband takes an oath keeping her trust in mind, she fulfils the oath and in the absence of the husband, she safeguards her chastity and his wealth."[Sunan Ibn Majah Pg. 62 Vol.3 Daral Risalatal Alamiyyah, first impression 2009]

If on one side, Islam has commanded a woman to be obedient to her husband in order to maintain a happy married life, then on the other side, there is much more emphasis on the husband to be kind and considerate towards his wife. In fact, there is so much emphasis on the husband to be considerate to the wife that even if he does not like his wife, he is advised to display good conduct towards her.

The Qur'an explicitly outlines this in the following verse:

وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

Translation:

And show good conduct (because) if you dislike them (wives), it is possible you only dislike something and Allah might have placed a lot of good in it." (Chapter of Women: Verse 19)

Hadhrat Abu Usamah Radhiyallahu Anhu mentions that the Prophet Sallallahu 'Alaihi Wasallam said:

"No Muslim man should hate a woman, for if he does not prefer a certain quality of hers, there will be many other qualities (of her) that he will prefer" [Sahih Muslim Pg. 1091 Vol 2 Dar Ihya Turath Al-arabiy. first impression]

Islam has made a man's conduct with his spouse a yardstick to define his character.

Hadhrat 'Aishah Radhiyallahu 'Anha reports that the Prophet Sallallahu 'Alaihi Wasallam said:

"The best amongst you is the one who has the best conduct towards his wife and I am the best amongst you in terms of good conduct towards my family."[Sunan Tirmidhi Pg. 709 Vol 5 Hadith 1161 Daral Gharbil Islamiy, Beirut 1998 edition]

It is the responsibility of both the husband and the wife to make their marital life harmonious and successful. However, the husband being the head of the house has a greater responsibility. In the instance that a disagreement or estrangement occurs between a husband and wife, the husband, being the head of the house, has the responsibility of sacrificing his persistence and firmness, and take the first step in resolving the disagreement.

If the marital discord is due to his behavior, then he should correct himself and try to win his wife over, and if it is because of the incorrect attitude of the wife, then the husband should attempt to rectify his wife with immense patience, love, care and wisdom. By understanding the consequences and ramifications of being harsh and emotional, one should save his garden of marriage from destruction by adopting an attitude of advice and counsel.

The Qur'an provides various step-by-step instructions as remedies to family dissention. We are certain that if these steps are brought into practice, then most of the disputes could be very easily resolved.

Almighty Allah says:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ
فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ
وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيًّا
كَبِيرًا وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا
يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

Translation:

Men have charge over women (as their overseers, guardians, protectors) because of the virtue (distinction) Allah has (in His infinite wisdom) bestowed some of you over others and because of what men spend (on women) from their wealth. So the righteous women are obedient and in the absence (of their husbands), are protective of their chastity and property of their husbands) because of that (those rights of women) which Allah has protected. As for those whose disobedience you fear, advise them; separate your bed from theirs and tap them (gently). If they obey you, then do not look for a way against them. (To wrongfully accuse them) verily Allah is most High, the greatest. And if you fear dissension between the two send an arbitrator from his people and an arbitrator from her people if they both desire reconciliation Allah will cause it between them. Indeed, Allah is ever knowing and acquainted (with all things) (Chapter of Women: Verse 34, 35)

In the above verses of Surah Nisah (Chapter of Women), four stages have been mentioned which outline the method of reconciliation between a husband and wife if a dispute were to occur.

The beginning of verse 34 states that a man is the leader of the family. The simple logic behind this is that no organization in the world can function without appointing a leader and in the dimension of a home, men are more capable of adopting this role of leadership. A man is more capable in bringing about discipline and channel the energies of his household in the right avenues.

This does not necessarily imply that a man possesses unrestrained and unlimited mandate that he plays the role of a dictator. Rather, it means that he is responsible of handling the administrative duties of the household, fulfilling the requirements of the family members and providing the children with the correct upbringing and education.

In the abovementioned verse, man has been appointed the caretaker and the head of the household due to two reasons:

1) Allah Ta'ala has given man a degree of virtue over women. This is understood from the following verse:

وَلَهُنَّ مِثْلُ ٱلَّذِى عَلَيْهِنَّ بِٱلْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَٱللَّهُ عَزِيزٌ حَكِيمٌ

Translation:

"Women have rights similar to what they owe in recognized manner, though for men there is a step above them. Allah is Mighty, Wise." (Surah Baqarah – Verse: 228)

2) The responsibility of the maintenance and the expenses of the wife and children is the responsibility of the husband.

For this reason, our jurists explicitly mention that though the wife may be rich and wealthy, her expenditure, maintenance and arrangements for living accommodations are still the responsibility of the husband even if he may be poor.

In light of this discussion, we can understand that if a woman were to happily support herself financially and not put the burden of providing maintenance upon her husband, then this too would not change the status of the husband as the leader of the house. This is because the first and foremost reason that Allah the Almighty has made the man the leader of the house is that a man has been given some level of superiority over women.

The appointment of the man as the caretaker is due to man being given a degree of virtue over women because generally men have been more blessed with those certain capabilities which assist in the heading and taking care of the household. However, women have no less of a role than men in the structure and running of the household. The internal issues of the household and supervision are solely the responsibility of women. Men and women both play a central role in the family system. The only way the household can be successful is through their mutual trust and cooperation.

Almighty Allah describes two qualities of a righteous woman in verse 34 of Surah Nisah:

1. فَالصَّالِحَاتُ قَانِتَاتٌ

Righteous women obey their husbands.

2. حَافِظَاتٌ لِلْغَيْبِ بِمَا حَفِظَ اللَّهُ

In the absence of their husbands, they protect his wealth and reputation.

The qualities of righteous wives mentioned in this verse are clarified further in the upcoming narrations.

The Arabic phrase "حِافِظَاتٌ لِلْغَيْبِ" can also mean that righteous wives are the confidants of their husband's secrets. In a marital relationship, secrecy and concealment (of the wife, i.e. for her to not gossip regarding her husband and vice versa) is a very important and crucial quality. This vital quality is very eloquently expressed in the Qur'an:

"They are apparel for you, and you are apparel for them."

[Surah Baqarah – Verse: 187]

If any woman is unable to maintain the husband's secrets, and she divulges those secrets, and she is unable to maintain the reputation and dignity of her husband, and in the absence of her husband, she allows strangers to enter the home, then this woman is a source of destruction to her husband's morale. Rather than being a source of happiness in the personal family life of the husband, she is a source of bitterness and distaste.

This verse, after mentioning the virtuous qualities of a wife, provides a solution that may assist in rectifying the wife and bringing her back to the correct path. If a woman does not inculcate these virtuous qualities within herself, does not fulfil her marital duties, does not obey her husband in lawful matters, does not maintain and protect the wealth and reputation of her husband and is ill-natured and mischievous, then a process with three stages and initiatives is presented to husbands to bring these types of women back to the correct path.

THE FIRST STEP: ADVICE AND COUNSEL, EXPLAINING AND TEACHING

The tenor of 'advice' is for the husband to repeatedly tutor his wife, inculcate the fear of Allah within her and warn her of the questioning of the Hereafter with utmost concern, gentleness and altruism.

If, in the instance that a woman is disobedient and malign, the husband, after recognizing the nature and temperament of a woman, attempts to guide her using advice and counsel with a sentiment of concern and altruism, he shall, with the will of Allah, be successful.

The meaning of 'advice' is not merely to abusively chide and express anger at her. In most cases, abusively scolding a woman without concern for her self-respect shatters the essence of her heart, and instead of reforming her, it creates a sense of obduracy within her.

THE SECOND STEP: SEPARATION IN THE BED

If rectifying the woman through advice and counsel is unsuccessful, the husband should display an attitude of inattention and displeasure [towards her]. Some commentators of the Qur'an explain that the meaning of separation in the bed is to abstain from sleeping with the wife. Others interpret it to mean: 'to abandon speech', whilst others explain that it means: 'to turn in the other direction from her in bed'. The summary of the various explanations is that the husband should develop a change in his attitude and behavior, and express his displeasure towards the woman. In some women, this method of rectification is more effective and efficacious.

THE THIRD STEP: SLIGHT CHASTISEMENT

If both the abovementioned methods of rectification prove to be unsuccessful, and the husband is convinced that by lightly hitting the woman she will reform and rectify herself, then Islam has permitted the husband to take this course of action.

However, he must consider the following conditions in this regard:

1) Hitting the woman should not be with the purpose of retribution or gratification of one's anger. Rather, the sole intention must be to rectify her. By hitting with the purpose of retribution; instead of rectifying the woman, there is a fear that it will worsen the relationship and lead to further estrangement.

2) After seeing a woman's disobedience and insubordinate attitude, if the husband has tried the first two methods of reformation shown by the Qur'an and was unable to reform the

woman, and he is convinced that even by hitting her lightly she will not reform as there is no hope in attempting to reform her, then it is incorrect for him to hit the woman merely for the sake of completing the reformation methods.

3) Whatever the situation, the husband is not allowed to assault and batter the woman severely. Hitting the wife to such an extent that it leaves a bruise, injures the body, breaks a bone or leaves a mark has been prohibited by numerous narrations.

Furthermore, hitting is completely prohibited, be it in a light manner, upon any of the delicate limbs of the body or face.

The Prophet Sallallahu 'Alaihi Wasallam said in his sermon on the plains of 'Arafat during the farewell Hajj: "Fear Allah concerning women! Verily you have taken them on the security of Allah, and intercourse with them has been made lawful unto you by words of Allah. You too have rights over them that they should not allow anyone to sit on your bed whom you do not like. But if they do that, you can chastise them lightly. Their rights upon you are that you should provide them with food and clothing in a fitting manner." (Sahih Muslim – V.2/ PG.891 – Dar Ihya Turath Al Arabi)

4) In the instance that a woman is disobedient and insubordinate, if the first two reformation methods lead to a failure, it is in no way necessary or rewarding for a husband to resort to lightly beating her. Rather, it is merely permitted in light of the necessity at hand. Islam does not in any way whatsoever encourage or incite one to hit his wife. In fact, Islam discourages this type of attitude.

In Islamic law, the permission to lightly hit a woman whilst maintaining the aforementioned conditions was only given because some social classes could not maintain their family life or improve it without adopting this method.

Otherwise, Islam wishes to form a society which diligently honors the dignity of women. Hitting a woman is a distant notion, Islam believes that she should not even be spoken to harshly.

There were incidents during the time of the Prophet Sallallahu "Alaihi Wasallam wherein the Sahabah Radhiyallahu Anhum raised complains to the Prophet Sallallahu "Alaihi Wasallam against their wives especially with regards to their sharp tongues and obscene language with the hope of securing a concession to hit them. Rather than granting them the permission to hit their wives, the Prophet Sallallahu "Alaihi Wasallam instead advised that they should terminate the marriage.

The famous Tabi'i, Hadhrat 'Ata Rahimahullah mentions: "If the wife refuses a command or prohibition given by her husband, then too the husband should not hit her. Rather, he should express his displeasure".

Qadi Ibn Al 'Arabi Rahimahullah has mentioned that this statement of Hadhrat 'Ata Rahimahullah is the pinnacle of his great intellect, insight, and understanding. (Ahkam ul Qur'an li Ibnil Arabi – V.1/PG.536)

So, what is the tenor of hitting the wife in Shari'ah?This has been fully explained in the following narration from the Prophet Sallallahu "Alaihi Wasallam:

Hadhrat Iyas ibn 'Abdullah reported that the Prophet Sallallahu "Alaihi Wasallam said: "Do not beat Allah's handmaidens (i.e. the wives)". After this, Hadhrat 'Umar Radhiyallahu Anhu came to the Prophet Sallallahu "Alaihi Wasallam and said: "Women have become very emboldened in opposing their husbands and have become disobedient".

Upon Hadhrat 'Umar's Radhiyallahu Anhu complaint, the Prophet Sallallahu 'Alaihi Wasallam granted permission for the husbands to hit their wives. After this, however, many women came to the wives of the Prophet Sallallahu 'Alaihi Wasallam complaining about their husbands. So, the Prophet Sallallahu 'Alaihi Wasallam said: 'Many women have come to my wives complaining about their husbands hitting them. Those men who hit their wives are not from amongst the good people.' [Sunan Abu Dawud: Pg. 479, Vol. 3 – Dar Ar-Risalah Al-alamiyyah]

From the above narration, it is clearly understood that Prophet Sallallahu 'Alaihi Wasallam disliked the practice of hitting the wives. However, considering that by completely prohibiting the husband from hitting the wife, there was a fear that women from some social classes would become rebellious and disobedient (as indicated towards by Hadhrat 'Umar Radhiyallahu Anhu), the Prophet Sallallahu 'Alaihi Wasallam did not completely prohibit this course of action.

If a husband and wife are unable to mutually resolve their differences and their feud reaches its peak, then this conflict and

tension will not only affect the couples but will also have a negative impact on both their families and the society. Hence, the matter shall no longer remain a confidential issue but will become a matter of public concern. In this regard, the Qur'an has invited a Muslim Judicial Committee or a Qadhi (who is in charge of the general welfare of the Muslim society) to resolve the complex issue between the spouses.

In Surah Nisa, Ayat 35, Allah Ta'ala says:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

Translation: "And if you fear dissension between the two send an arbitrator from his people and an arbitrator from her people, if they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever knowing and acquainted (with all things)" (Surah Nisa: Verse, 35)

The summary of this verse is that if the relationship between the husband and wife has become critically unpleasant and there is no hope of mutual reconciliation, then in order to settle the dispute, a Qadhi (Muslim Judge) or a Muslim Judicial Committee should appoint two arbitrators; one arbitrator from the husband's family and the other arbitrator from the wife's side. The two arbitrators should be pious, sincere, and knowledgeable about the case. Their responsibility shall be to listen to the statements and arguments of both parties, dispel any evil presumptions one party has towards the other, and attempt to unite their hearts.

It is the promise of Allah the Almighty that if both arbitrators attempt to resolve the matter with a sentiment of altruism, then unity and harmony shall blossom between the

husband and wife. This is why it has been reported regarding Hadhrat 'Umar Radhiyallahu Anhu that if two arbitrators came to him and said "in spite of our strenuous efforts, a reconciliation could not be achieved between the husband and wife", Hadhrat 'Umar Radhiyallahu Anhu would reprimand them and say "you people did not make a complete effort to achieve a reconciliation, try again! For it is indeed the promise of Allah the Almighty that if two arbitrators make an effort of achieving a reconciliation between a husband and wife, then Allah the Almighty will create unity and harmony between the husband and wife".

However, if the arbitrators genuinely fail to resolve the issue, and according to them the only way to resolve the dispute between the spouses is to annul the marriage, then in that case, if the husband wishes to terminate the marriage, the solution is simple. But if the husband is not willing to terminate the marriage, do the arbitrators have the right to terminate the marriage?

There are two views amongst the Muslim jurists on this issue. According to Imam Malik Rahmatullahi 'Alaih, if the arbitrators confirm that an annulment of the marriage is the only solution to the dispute, then they shall have the right to terminate the marriage despite the fact that the husband is not ready to terminate the marriage.

However, most of the Muslim jurists are of the view that the arbitrators do not have the right to terminate the marriage.

In order to remove conflicts between the husband and wife, and to create a harmonious marital relationship, Allah the Almighty has prescribed four methods in Surah Nisa. If these

methods were to be brought into practice whilst keeping in mind the prescribed principles and guidance of Islam, then the majority of the domestic disputes would be resolved. In such cases, with the Will of Allah, there would no need for a divorce or separation.

DIVORCE IS REGARDED AS AN UNDESIRABLE ACT IN ISLAM

Islam does not look at divorce favorably. The Prophet Sallallahu ‘Alaihi Wasallam has expressed great dislike towards divorce in various narrations.

Hadhrat ‘Abdullah ibn ‘Umar Radhiyallahu Anhu narrates that the Prophet Sallallahu ‘Alaihi Wasallam said:

أَبْغَضُ الْحَلَالِ   تَعَالَى الطَّلَاقُ

“Of all the lawful acts, the most detestable to Allah is divorce.”[Sunan Abu Dawud: Pg. 305, Vol. 3 – Dar Ar-Risalah Al-alamiyyah]

Just as it is extremely undesirable for the husband to issue a divorce without an unavoidable necessity, it is also disliked by Allah the Almighty and His beloved Prophet Sallallahu ‘Alaihi Wasallam for the wife to demand a divorce without a valid reason.

The Prophet Sallallahu ‘Alaihi Wasallam said:

“The fragrance of paradise is prohibited upon the woman who demands a divorce from her husband without a valid reason”[Musnad Ahmed, Sunan Al Tirmidhi, Sunan Abu Dawud]

Iblis feels elated when a married couple decide to separate. This can be understood from the following narration:

Hadhrat Jabir Radhiyallahu Anhu narrates that the Prophet Sallallahu 'Alaihi Wasallam said: "Iblis places his throne on the water and he dispatches his army in different directions (to cause mischief). The closest devils to Iblis in terms of stature are those who are most notorious in causing mischief. One of his disciples comes to him and reports the day's activities by saying: "I did so and so". Iblis says: "You have done nothing of worth." Then one from amongst them comes and says: "I continued to beguile so and so person to such an extent that I managed to cause a separation between him and his wife". Iblis calls this devil close to him and says: "You have done a monumental work!" A'mash said: He (Iblis) then embraces him. [Sahih Muslim, pg. 2167, vol. 4 – Dar Ihyaa At-turath Al-Arabi]

From the above narration, we understand that Iblis receives immense pleasure over a separation between a husband and wife and he applauds the devil responsible for the separation between the spouses. The reason behind Iblis' immense happiness over a divorce and separation is that a divorce destroys a home and consolidates an enmity between two families. Thus, giving Iblis endless opportunities to spread mischief and deviation.

DIVORCE IS AN UNAVOIDABLE NECESSITY

Despite the fact that ending a marriage or giving a divorce may be an extremely abhorrent act, one cannot deny the reality that at times, this act becomes an unavoidable necessity. At times, natural harmony is not found between a husband

and wife; even though both are pious and righteous, they are incompatible for one another due to immense differences between them in their temperaments, attitudes, and individual habits.

In such a case, if all attempts to amend the situation by creating harmony lead to a total failure, there is no benefit for any of the parties (the husband, wife, or the society) in binding the two spouses to the institution of marriage through legislative force.

The flag of marriage can only fly at full mast if the winds of mutual affection, love, trust, and cooperation are blowing. The purpose of a marriage can never be fulfilled if there is an environment of evil presumptions, mistrust, hatred, and enmity.

It is for this reason that Islam has shown us the method of dissolving a marriage should such an unpleasant situation occur, and despite the notion of divorce being detestable, Islam has not completely prohibited it.

The unavoidable necessities of life cannot be deferred. Thus, a system should be put in place to accommodate these necessities. In even the most affluent and fashionable areas of a city, sewage pipes are found beneath the ground. If a municipality were to announce that they no longer require these dirty pipes and decide to close them, what would happen to the city? All the roads and pathways would be impossible to cross due to the filthy water and slime, as well as its horrid stench and smell.

RECOGNISING THE NEED FOR DIVORCE

Despite the fact that 50 years ago, the Islamic system was criticized with a plethora of disapprobation for its validation of divorce, the world now sees that the notion that was once considered a fault in Islam is the same notion that is now considered a merit of Islam. In every political and religious dispensation, the vision of Islam with regards to divorce has been adopted in some form.

In the Hindu religion, as mentioned by the representatives of the religion from the latter centuries, divorce was not considered permissible. Eventually, however, the Hindu members of the Indian parliament formed a Hindu Code Bill in which permission for divorce was granted.

Even still, the conditions and restrictions added to the Code Bill with regards to the permission of divorce are such that it does not fulfill the requirements of the Hindu society with regards to divorce. For this reason, at times, a Hindu husband has to go to the extreme of converting to a different faith in order to free himself from a disliked wife.

The Christians also did not allow divorce. However, after constant demand and pressure, all the Christian countries gradually brought in laws to facilitate the right of divorce. Demand for the right of divorce did not only come from men, in fact, women's rights groups were also persistent and ardent in their demand.

Despite the fact that in western countries, the right of giving permission for divorce lies in the hands of a court, the incidents of divorce are perpetually on the rise. The institution of marriage and the notion of divorce have become sport and play. The tranquility of family life has been destroyed.

WHO SHOULD HAVE THE AUTONOMY OF DIVORCE?

We have agreed that in some instances, divorce becomes an unavoidable necessity for a human being. We have also agreed that to keep a husband and wife tied to the institution of marriage even when it has completely broken down is manifest oppression upon the two spouses as well as upon the society. However, the question arises: to whom should the autonomy of divorce be given in order to facilitate minimal aggravation and a deliverance of justice in the entire procedure of divorce?

There are four possibilities:

1) The autonomy of divorce is jointly given to both the husband and the wife; just as the institution of marriage was formed through their consent, it should not be revoked except through a joint consultation and decision by both parties. This possibility is compatible with the laws of Islam.

If a man and a woman mutually agree to end their marriage, they have the right to do so. In Islamic jurisprudence, this is referred to as Khula'. The Qur'an itself and the Prophetic teachings mention the permissibility of Khula'.

However, this is not the only method of ending a marriage in the laws of Islam. In fact, there are other methods which we shall elaborate upon soon.

2) The autonomy of divorce is given to the husband alone.

This option is also compatible with the laws of Islam. From an outside perspective, this may come across as a strange view that the institution of marriage which only came into existence through the consent of both the man and the woman, may be ended through the decision of one party.

However, due to various profound reasons supported by wisdom (which shall be elaborated upon soon), Allah The Most High has given the autonomy of divorce to the husband alone. Along with this, the husband has been advised not to use his autonomy of divorce frivolously. In fact, he has been guided by the Qur'an and Prophetic teachings towards the proper manner of giving a divorce.

3) The autonomy of divorce is given to the wife alone. This option is not compatible with the laws of Islam. In Islamic law, a woman alone has not been given the autonomy of divorce. This ruling is one which serves to the benefit of women. We shall shed light upon the reasons as to why a woman has not been given the autonomy of divorce in the coming chapters.

Although Islam has not given the sole autonomy of divorce to a woman, Islam has emphasized that a woman must not be oppressed or hurt in any way whatsoever. For this reason, if a husband does not fulfill the rights of his wife or oppresses her, the woman shall have the right of presenting her case to a judge with the hope of having her marriage annulled.

4) The autonomy of divorce is not given to the husband, nor is it given to the wife. Rather, the issuing of a divorce and autonomy of divorce is left to the discretion of a judge. Whosoever from the husband or wife wishes to end the marriage shall be required to go to a court, file for a divorce, and establish the claims and reasons behind such a decision.

The judge shall then summon the other party and avail him or her the opportunity to respond to the claims. Finally, if the judge feels that the claim for divorce is reasonable and understandable, he shall annul the marriage. Otherwise, he shall discard the claim. In the current times, the family laws administered by a country generally grant the autonomy of divorce to a court supporting the claim that by taking away the autonomy of divorce from the husband and giving it to the courts, it shall reduce the rate of divorce, bring oppression upon women to a halt and shall also protect their family rights. Islam does not concur with this argument.

We shall soon elaborate that the reports of those countries that have adopted the practice of granting the autonomy of divorce to the courts show that instead of decreasing the rate of divorce, this practice has actually increased the rate of divorce and has not decreased the oppression upon women in a significant manner. Through this law, there is less benefit and more harm for women and the society in general.

IS IT APPROPRIATE TO HAND OVER THE RIGHT OF DIVORCE TO THE COURTS?

It is vital and important to first and foremost discuss as to why Islam has not given the right of divorce solely to the courts, even though this appears to be the most logical op-

tion. This is because in a matter of this nature, a husband and wife are two separate parties and as such, each one may demand a divorce after becoming overwhelmed by a momentary feeling of frustration.

On the other hand, the judge is an impartial and intelligent individual. He is the only one who can determine whether the demand of divorce is due to a momentary knee-jerk reaction stemming from ephemeral frustration or if there is a genuine case of a deep divide between the husband and wife to such an extent that there is no possibility of maintaining the marriage.

In order to understand this point better, it is vital and necessary to have a clear insight on the correct nature and spirit of the relationship of marriage.

Marriage is not mere dry legislative procedure. The entire success of marriage is solely based on love and affection between the husband and wife and having complete trust on each other. Without love and affection, unity and trust, the relationship of marriage cannot be maintained by mere dry legislative procedure. Even if this lifeless marriage is somehow maintained, instead of it being a precious bounty and happiness, both will perceive it to be imprisonment and punishment.

This reality should also be borne in mind that the relationship and bond of marriage is very sensitive and delicate. There are so many means/causes for the husbands' heart to be wearied from the wife and for the emotions of hatred to be entrenched in his heart that they cannot be brought to the justice of the court. Sometimes, the grounds of divorce are of such a nature that there is no benefit to the woman in

bringing such cases to court. In fact, keeping such issues a secret is better for them.

Understand these brief points through a few examples:

1) Assume that a marriage took place between Khalid and Zainab who are both pious and righteous, however, there is a world of difference between their habits and nature. Due to the spouses being incompatible in their nature, there exists a resentment between them over petty issues. This daily resentment and disputes have developed into hatred. Now Khalid has no space in his heart for Zainab. In this situation, Khalid is willing to end his Nikah with Zainab.

Now, if he goes to the court and gives the true reasoning behind his demand for a divorce, the court will not give him permission to issue the divorce because, according to the court, Zainab has not perpetrated any inappropriate act that warrants a divorce. Now, Khalid has only two options.

The first option is that he wrongfully accuses her (of fornication etc.) and brings forth false witnesses and releases himself from her. In this case there is no doubt that Khalid will be a sinner. Apart from that, Zainab will have her public image tainted and this will make it extremely difficult for her to get another match.

The second scenario is that after having exhausted all means and instead of him being able to relieve himself from Zainab, he is forced by the rule of law to keep Zainab in his marriage. It is obvious that if Khalid's heart is broken/hardened from Zainab and his heart is entrenched with emotions of hatred for her, how would he then fulfil Zainab's due marital rights? It is possible that perhaps due to having the fear of Allah or

fear of the rule of law, he may keep providing Zainab's maintenance, however, it is far-fetched that Zainab will be receiving that love, affection and harmony in Khalid's home which holds greater importance than maintenance.

2) A husband is extremely possessive over his wife. Let us assume that he has complaints in regards to his wife being immoral. After having cautioned and reprimanded her several times, he is unable to rectify the woman and she is still involved in those immoral habits. The husband is left with no choice but to terminate his marriage with her. Now, if the husband was given the sole right of divorcing his wife, he would do so silently without anyone knowing.

By adopting this method, the husband would be relieved and the shameful act of the wife would also remain concealed. It is possible that she would repent from this evil act and get married to another person.

On the other hand, by handing the court the right of divorce, the husband and wife's paths are paradoxical. If the husband has to go the court and give a true account of the events and seek divorce, the wife would be infamous and notorious in the eyes of the community even before the judge has issued a decree. Her standing and status in society would be highly tarnished/stained. (Even if the court clears her of the accusations). She would not be able to show her face to anyone. Allah Forbid, if this case was to come to the knowledge of journalists!

It is apparent that if fictitious stories are not made and false witnesses are not brought forth, it's a tough task to prove a claim of promiscuity. This is why, if the husband only suffices

on presenting the truth, then he will not be able to prove his claim and thus he will not be given the right to divorce his wife by the courts.

In this situation, how will he then be able to bear and fulfil the demands and requisites of a marital life? Even though according to law and paper they will be in the bond of marriage, practically, however, they will be living as though they are not married, or in fact, worse than that. The wife specifically, will be trapped in a great calamity.

In these types of situations, many noble and dignified husbands do not even take the matter to court due to the fear of defaming their families and as such continue to live with swallowing their blood (extremely difficulty). For them, instead of the bond of marriage being a bounty and mercy, it becomes a psychological, mental and financial burden.

THE COURTS RIGHT OF ISSUING A DIVORCE AND THE EXPLANATION OF DIVORCE (CIVIL DIVORCE)

By appointing the court as the sole proprietor in issuing a divorce, the rate of divorce will be proportionate to the legal grounds available for divorce. In countries where the legal grounds for divorce have been kept broad, particularly in giving preferentiality to the wife, it has caused the rate of divorce to escalate alarmingly.

Many times the wife becomes unhappy with the husband over trivial matters. She may be overcome with sudden emotional outbursts and in the spur of the moment, she may decide that she cannot bear the company of her husband and may apply for annulment of the marriage.

According to the courts, she can qualify to apply for annulment on the basis that she is not prepared to live with her husband due to the suffering she has experienced at his hands. The judge may rule on terminating the marriage even though the wife may not be able to prove her claims.

The preconceived notion of her typically being deemed a victim of oppression is a result of the current legal principles adopted by the courts. As a result, the interests and welfare of the husband and children are negatively impacted. The husband, in particular, suffers significant monetary and family loss.

After the wife's anger subsides, she realizes the ramifications of her rash decision, is filled with remorse and wants to restore the marriage. However, the husband does not risk restoring the marriage because of his bitter experience with her.

Due to the facility of divorce being easily accessible, marriage and divorce have become a jest in western countries. Marriages have become very unstable. The rate of divorce is increasing at an alarming pace.

This trend is causing great harm to the children of divorce. After becoming deprived of the love and upbringing of their parents, they are prone to different types of sicknesses, bad habits, psychological and mental disorders. This is despite the fact that the government is providing them with medication, upbringing and a high standard of education.

The increase of children being deprived of the love of a mother and father and a proper upbringing is becoming a threat to the community. These very same children get attracted to gangs. They get involved in bad habits and instead

of using their talents for the development of the country, their activities contribute to the downfall of communities and the country in general.

On the other hand, if the grounds for divorce are made restrictive, there may be other acrimonious results.

The grounds for divorce are too restrictive; for instance, the husband can only file for divorce when he can prove the infidelity of his wife through witnesses. In most cases of this nature, the husband is unable to prove his claim even if the wife is guilty. How can he present witnesses in the court of law whereas these acts are typically done in privacy?

It is not in the interest of women to give lawyers and judges a chance to conduct a deep investigation. By allowing such an investigation, a woman would face ridicule and disgrace in society irrespective of the decision of the court.

Furthermore, if the husband wants to separate on the basis of his resentment towards her conduct or temperament and not on the basis of infidelity, then he will either conjure false allegations against her or will experience an unsuccessful trial at court.

In this situation, the marriage will remain intact based on government law. However, rather than being a source of happiness, comfort, and joy, the marriage will bring about pain and distress.

A husband who knows only animosity towards his wife may bear the expenses of the wife due to the law, but it will not be possible for him to share love and comfort with his wife. In this situation, keeping the marriage intact is not beneficial.

This fear is heightened further when the couple is young, and there is fear of potential violence. The result of keeping such a marriage intact is that they will either continue fighting or will fulfill their lust in avenues which will cost them their honor and dignity.

Ultimately, through the help of lawyers, the husband will end up falsely accusing his wife of infidelity and immorality and claim the right to divorce through forged proofs and documents.

In an era wherein religious teachings, good character, and upright conduct are a scarcity; and wealth is placed on the highest pedestal, it will not be difficult for the husband to acquire the talents of lawyers and government employees who are skilled in twisting the truth and forging false proofs documents and present such proofs in court.

The decree of the court, irrespective of what it may be, will greatly tarnish the future of the wife. She encounter suspicious attitude from family and society. What can be of greater harm to a woman?

If the husband does not succeed in getting rid of his wife through false accusations, then he will look for other unlawful ways of getting rid of his wife.

The number of women being killed by their husbands in various countries is known only to Allah. One only needs to turn to the media to hear or see daily occurrences of this nature.

Is keeping the marriage of a hundred women intact a greater concern than the killing of fifty women? Is this matter worth even the slightest bit of consideration?

ONE DECISION OF THE SUPREME COURT AND THE SUBSIDIARY ISSUE OF DIVORCE

A few years ago, the Supreme Court caused pandemonium based on the claims of four Hindu women whose husbands accepted Islam and remarried. According to the judge, these four men accepted Islam solely to separate from their wives. If the findings of the judges were true, then a bitter reality is before us. The Hindu Code Bill needs to be adjusted as it cannot facilitate the causes of divorce in the Hindu custom. Hence, there is a need to change and expand the Hindu Code Bill.

Adopting a new religion is not an easy transition in Indian communities. An individual who has the courage to convert from Hinduism to Islam faces many challenges, including being boycotted from his family and community. Thus, one will go to this extreme for one of two reasons:

1) His beliefs have changed through research and pondering. He has such firm belief in the truthfulness of Islam that he would rather cut away from his community and face difficulties as he cannot bear to stay in his old religion which he believes to be false and baseless.

2) His beliefs have not changed; he is still true to Hinduism. However, converting to Islam is the only solution available to him to escape from an unbearable difficulty, e.g. he is unable to live with his wife due to the bitterness between the two. However, according to the Hindu Code, he does not have the right to divorce which is why he would rather change his religion to separate from his wife, despite knowing the challenges that he will have to face upon converting to Islam. In

comparison to the difficulty of staying with his wife, he opts to become Muslim as he considers the challenges he will face upon converting to Islam more tolerable.

SHORTCOMINGS OF THE HINDU CODE BILL

It is clear from the above analysis that the legal grounds for a divorce in the Hindu Code Bill are very limited as they do not fulfill the needs of divorce within the Hindu community. Many educated and wealthy Hindus even go as far as to accept Islam solely to separate from their spouses.

Amending the Hindu Code Bill in order to expand the legal grounds for divorce or to give the husband possession of the right to divorce is a possible solution for such difficult circumstances. Imposing the Civil Code is not the solution as this will lead to adverse ramifications such as barring husbands from changing religion for the purpose of gaining autonomy from their wives.

Will adopting the Civil Code solve the problems facing married women? A husband who is completely frustrated with his wife to the extent that he resents her and he is repulsed at the sight of her, will go so far as to change his religion for the sole purpose of gaining separation from her.

This attitude, we fear, will increase oppression on Hindu women and no court will be able to prevent such oppression.

Recently, it was reported that a Hindu husband arranged for his brother and nephew to rape his wife to validate his claim of his wife being immoral. In doing so, he then had sufficient cause to divorce his wife according to the Civil Code.

It is clear from the above analysis that to hand over the right of divorce solely to the court is not in the interest of the husband and wife, and not in the interest of the community. It does not decrease the rate of divorce, and neither does it fulfill the objectives of a divorce. The only outcome is that the intimate secrets of the husband and wife are made apparent for the public to probe over. This exposure leads to humiliation and disgrace for both the husband and wife. A better alternative is to quietly and amicably terminate the marriage and thus, keep their integrity intact.

DIVORCE THROUGH MUTUAL AGREEMENT BETWEEN THE HUSBAND AND WIFE

In the previous pages, we have highlighted the argument that granting the autonomy of divorce solely to the court is not beneficial for the husband, wife or the society in general. The actual objectives of a divorce are not even fulfilled through this method.

Now, we wish to discuss the issue of granting the autonomy of divorce jointly to both the husband and wife i.e. if a legislation were to be made that a divorce cannot be given without mutual agreement and consensus between the two parties and neither of the two parties would have the sole autonomy of ending a marriage, how would this work out? It cannot be disputed that if a husband and wife were to mutually agree upon ending their marriage, they should have the right to do this. Islam has given the husband and wife this right, which is known as Khula'.

However, to limit the methods of divorce to this particular method is not an appropriate measure at all. Many incidents

are found in which one partner, either the husband or the wife, wishes to terminate the marriage in all instances whilst the other is not at all prepared to do so. Hence, in the countless situations wherein this happens, a divorce cannot take place even though one of the two partners, either the husband or wife, has become vexatious and frustrated to such an extent that emotional hatred has reached its summit in his or her heart for the other partner.

The institution of marriage can only be successful and prosperous if the hearts of the two partners connect with one another, have love and respect for one another and the two companions have complete trust for each other. Therefore, it is not appropriate in any way whatsoever to create the restriction that a marriage can only be dissolved through mutual agreement between the husband and wife. The result of this shall be that in order to escape from the other partner, the vexed partner shall commit a deeply unlawful and destructive act.

WHY DOES THE HUSBAND HAVE THE RIGHT OF DIVORCE?

Islam grants the unilateral right of divorce only to the husband. If the husband does not fulfil his responsibilities or he is oppressing his wife, the wife has the option to request a judge for the annulment of her marriage. However, she does not have the right of divorce. What is the reason for granting this right only to the husband? What is the rationale behind this? What has Islam considered? And what is the wisdom behind this? This may be answered through the following points.

The answer to this question lies in the nature of roles that a husband and wife assume in a married life. In Islamic law, a husband bears all the financial burden which result from a marriage contract. It is he who has to pay a dowry to his wife. He has to bear the expenses incurred during the wedding in terms of walima, etc. He has to support his family financially and provide a home to his wife and children. Even mundane domestic affairs are his responsibility. The wife does not have these responsibilities upon her. However, if she voluntarily undertakes some of these responsibilities, then this might be cost effective for the husband.

On the contrary, there is no financial responsibility on the wife. In fact, she will receive gifts and dowry. This is a supplementary advantage. In a nutshell, all the financial responsibilities are borne by the husband. This applies even after a divorce; in the event of a divorce, if the husband has not discharged the dowry to the wife, he is required to settle it immediately. During the iddah period, the husband has to continue to bear her financial expenses. The husband also has to look after his sons who have not yet reached puberty as well as his unmarried daughters. In fact, the divorced wife will be remunerated for taking care of the sons who have not yet reached puberty.

Moreover, when a man who has divorced his wife wishes to marry another woman, he has to pay similar expenses which makes the whole idea of divorce and remarriage a very costly affair. Thus if one acts according to the teachings of Islam and a divorce does take place, a woman would not suffer any financial loss, in fact, she would at times benefit financially.

Therefore, due to the fact that there is so much financial strain in relation to both marriage and divorce upon the husband, he would be very hesitant in issuing a divorce and would only resort to divorce as a last resort. Thus, in view of this expected financial loss, a husband would think very carefully before deciding to terminate a marriage

A question may arise as to why the husband should bear the responsibility of the expenses after marriage and after divorce, and why the wife does not bear some of the expenses as well?

To understand the answer, one should first unravel the inherent natures of every male and female that Islam takes into consideration. To understand, this a detailed discussion is necessary.

One of the main reasons for a man holding the right of divorce is that he is more capable of controlling his emotions especially if a dispute occurs between him and his wife, on the contrary, women are more emotional and hasty.

If the wife had been given the right of divorce, there is a possibility of abuse whereby the wife could divorce the husband on trivial issues due to her being unable to control her emotions, this would leave the husband with a substantial financial burden.

According to Sheikh Abu Zuhra, the rate of divorce is higher in those marriages in which the woman secures an undertaking from her potential husband to transfer the autonomy of divorce to her. We can blow our trumpets to prove the equality between men and women, but the reality is that we can never remove the different temperaments of both genders.

We cannot deny the fact that some women can control their emotions and temperament better than men, however, rules are designed according to the general situation and not according to isolated situations. Even though the right of divorce is held by the husband, Islam has also adopted a practical approach to prevent the wife becoming a victim of oppression. She could ask for the annulment of her marriage through a judge when the husband oppresses her or does not fulfil his duties.

DISSOLUTION OF MARRIAGE BY A JUDGE

There are many options available for a woman to dissolve her marriage for example,

1. Absent husband: absconding or missing

2. Failure to provide maintenance: inability or refusal

3. Husband is insane

4. Husband is impotent

5. Severe abuse: Physical or other

6. Serious health condition or disease: leprosy or any such disease that could endanger the wife.

According to Imam Malik Rahimahullah, when a judge presides over a marital dispute and the disputing spouses present their witnesses, and it has not become clear who is the transgressing party due to the wife not presenting her claim of annulment clearly, the judge can accept the application of the woman and annul the marriage (even if the wife cannot provide sufficient grounds) if the judge feels that the discord

between the spouses is very severe and there is a fear of creating more harm by maintaining the marriage.

Furthermore, if there is an insistence on handing over the autonomy of divorce to the wife, then there is a leeway for that as well. If at the time of the marriage or after the marriage, the husband hands over the autonomy of divorce to the wife or a third party, then the wife or third party may exercise that right which cannot be revoked by the husband.

IMPORTANT ADVICES PERTAINING TO DIVORCE

While Islam has given the husband the right to issue divorce, it has also set certain guidelines. If those guidelines are considered, then the use of the right of divorce will be exercised in extreme desperation and as a last resort after all avenues of resolving the dispute and attempting a reconciliation have failed.

Furthermore, if one considers the procedure of divorce in Islam, the door of a dignified reconciliation remains open. Some of the important and fundamental advices from the Qur'aan and Sunnah pertaining to divorce are;

1) If someone wishes to divorce a woman with whom he was intimate, he should issue one revocable divorce after her menstrual cycle has ended without engaging in conjugal relations. He should not issue a divorce during her menstrual cycle or in a clean cycle in which they were intimate.

The wisdom behind this is that during her menstrual cycle, the husband may feel disinclined towards her as she is not clean and there are restrictions to being intimate with her. Similarly, the husband may feel disinclined towards his wife

after being intimate with her in a clean cycle. On the contrary, his divorce in a clean cycle where his emotions are still strong indicate his complete detachment from his wife and divorce being his final recourse.

2) Secondly, the husband is advised to suffice on one revocable divorce. This is the best form of divorce because if the husband regrets his decision, he still has the opportunity to revoke his divorce within the ‘iddah period. Revoking the divorce will not necessitate a renewal of the marriage or dowry and the initial marriage will remain intact.

If he does not revoke the divorce within the ‘iddah period, the divorce will be finalized with the completion of the ‘iddah period and their marriage will terminate. However, if they wish to remarry, they shall have the option to do so.

3) If the husband is adamant on giving three divorces, Shariah advises him to give one revocable divorce in a clean cycle in which he did not have intercourse with his wife. Thereafter, he should give the second revocable divorce approximately a month later; after her second menstrual cycle finishes. He should give the final divorce after her third menstrual cycle.

After the first and second revocable divorce, the husband still has the option of revoking the divorce during the iddah period if he wishes to restore the marriage. If he chooses not to give the third divorce and allows her iddah period to finish without revoking the divorce, they can still consensually remarry.

After the third divorce, the husband cannot revoke his divorce nor can the husband and wife remarry regardless of their desires.

4) Shariah presents these methods of divorce so that the husband and wife are availed an opportunity to ponder and reflect over the situation, understand and restore their relationship, and rectify their flaws.

5) Islam has bestowed a great favor upon women by limiting the number of divorces to three and has prevented the marital life from becoming a mere child's play. In the pre-Islamic era, the Arabs would not have any limited number of divorces. After every divorce, the husband had the right of taking back his wife. In this manner, husbands would revoke their divorces before the completion of the 'iddah period. This system of divorce and revoking of divorce continued for many years. Thus, the wife was never able to gain deliverance from her oppressive husband nor was she able to conduct herself as a typical wife should.

Islam abolished this practice and eliminated this system of oppression which gave the husband the right to issue unlimited divorces and revoke thereafter. Islam also put such mechanisms in place which restricted the husband from reconciling with his wife and remarrying her during her 'iddah period after issuing three divorces. The result was that the respect and awe for the institution of marriage was restored.

6) Violations of the Islamic teachings of divorce is a grave sin. For example, to give divorce during menses, giving three divorce at once and giving more than one divorce during the woman's purity (tuhr) period. Hadhrat 'Umar Radhiyallahu Anhu would reprimands those husbands that gave three divorces at once.

Currently, due to the lack of understanding of the teachings of Islam and lack of consciousness of Allah, there has been an escalation in the violation of the laws of divorce.

Many arrogant men think divorce is not even valid unless three divorces are given, this is why the issuing of three divorces is common. Some give divorce during menstrual periods whilst others give divorce over trivial arguments.

In relation to this, two issues are very important:

1. In order for this ignorance to be removed, the understanding of the laws of marriage and divorce should be given importance. It should be advised that to give divorce without any necessity or to give divorce against the teachings of Islam is a grave sin and that there will be a great accountability for this in the court of Allah.

2. A communal effort should be made to encourage the people not to take the matters of marriage and divorce lightly. The severity of giving divorce without necessity and to give it in the wrong manner should be made. A penalty should be imposed for those who violate the laws of divorce and if there is a need, then a social boycott should be implemented.

The prevention of wrong doings should not only be enforced through the laws. At times, a social boycott is very effective. Many Muftis have permitted for an appropriate penalty to be imposed for those who violate the laws of divorce or a social boycott be implemented.

We hereby present a question which was posed to Mufti Rasheed Sahib (May Allah have mercy on him) and his reply in this regard.

TA'ZEER (DISCRETIONARY PENALTY) IS COMPULSORY ON THE PRESENT INCORRECT PRACTICES OF ISSUING TALAQ

Question: In this day and age, the most detestable of lawful actions to Allah (i.e. divorce) has become quite common, which has triggered widespread defiance and violation of the laws of Allah, and distortion of the correct ideology. Nevertheless, it is undeniably the right of the man to issue divorce in any given circumstance. However, in most cases, the man himself is the oppressor and hastens in issuing divorce. Bearing the above in mind, can issuing divorce in such situations be sufficient cause to meting out a discretionary penalty? The penalty would be that his fellow fraternity display aversion towards his actions and disassociate themselves from him until he no longer disregards the commands of Allah. Is this penalty in the form of disassociation and social boycott permissible?

Answer: There are many sins committed in the way the husband typically issues divorce in current times. The correct method is for the husband to issue one revocable divorce while the wife is in a state of purity and conjugal relations did not take place. The husband should do this after making a sincere effort to reconcile between his wife and after he has sought advice from upright and righteous people.

Failure to abide by the injunctions of Islam has resulted in the following malpractices:

1. Issuing divorce without any hesitation, thought, or consideration

2. No effort in attempting to reconcile

3. No consultation with upright and righteous family members before issuing divorce

4. No Istikharah made before issuing a divorce

5. Issuing a divorce during the menstrual cycle

6. Deeming it necessary to give two or three divorces at once

7. Many adopt the detested practice of halalah since it is the only method of reconciliation available after issuing three divorce. Some even avoid the practice of halalah and choose instead to involve themselves in Zina for the remainder of their lives.

Based on the points mentioned above, it is necessary that the government enforces a severe penalty. In case the government turns a blind eye to these situations, then the penalty of social boycott and disassociation should be enforced.

[Ahsanul Fatawa, Pg. 194-5, vol. 5]

RECIPE FOR A SUCCESSFUL MARRIAGE
BY: MUFTI EBRAHIM DESAI

Question: *Every human being by nature has an instinct to dispute. This instinct becomes more manifest between the husband and wife, thus leading to marital disputes. How can this instinct be controlled?*

Answer: *Consider the following ten points to control the instinct of dispute and maintain a happy marriage.*

1. Fear Allah: It was the noble practice of Rasulullah Sallallahu 'Alaihi Wasallam to conscientise the spouses about the fear for Allah before performing a Nikah by reciting the verses (Nisa v14, Ahzab v69, Aali-Imraan v101) from the Qur'aan. All the verses are common in the message of Taqwa (fear of Allah). The spouses will be first committed to Allah before being committed to their partner. There can be no doubt in the success of a marriage governed by the fear of Allah.

2. Never be angry at the same time: Anger is the root cause for all marital disputes. One Sahabi came to Rasulullah Sallallahu 'Alaihi Wasallam and sought some advice. Rasulullah Sallallahu 'Alaihi Wasallam replied, control your anger. The same advice was rendered three times. (Mishkaat pg.433; HM Saeed)

3. If one has to win an argument, let it be the other: Rasulullah Sallallahu 'Alaihi Wasallam said: "Whoever discards an argument despite being correct shall earn a palace in the center of Jannah. (Ibid pg.412)

4. Never shout at each other unless the house is on fire: Luqman (AS) while offering advice to his son said:" and low-

er your voice for verily the most disliked voice is that of a donkey". (Surah Luqman v19)

5. If you have to criticize, do it lovingly: Rasulullah Sallallahu 'Alaihi Wasallam said, 'A Mu' min is a mirror for a Mu'min.' (Abu Dawud vol.2 pg.325; Imdadiyah) Advise with dignity and silently.

6. Never bring up mistakes of the past: Rasulullah Sallallahu 'Alaihi Wasallam said: "Whoever conceals the faults of others, Allah shall conceal his faults on the day of Qiyaamah." (Mishkaat pg.429; HM Saeed)

7. Neglect the whole world rather than your marriage partner: Rasulullah Sallallahu 'Alaihi Wasallam confirmed the advice of Salman to Abu-Darda [RA] for neglecting his wife. "Verily there is a right of your wife over you." (Nasai Hadith2391)

8. Never sleep with an argument unsettled: Abu Bakr Radhiyallahu Anhu resolved his dispute with his wife over-feeding the guests before going to bed. (Bukhari Hadith 602)

9. At least, once every day, express your gratitude to your partner: Rasulullah Sallallahu 'Alaihi Wasallam said, 'Whoever does not show gratitude to the people has not shown gratitude to Allah.' (Abu Dawud pg.662; Karachi)

10. When you have done something wrong, be ready to admit it and ask for forgiveness: Rasulullah Sallallahu 'Alaihi Wasallam said, 'All the sons of Adam commit error; and the best of those who err are those who seek forgiveness.' (Tirmidhi Hadith 2499)

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The erudite and well-known French author and intellectual, Gustave Le Bon, writes in his critically-acclaimed book, The World of Islamic Civilisation:

"The principles of inheritance which have been clearly shown by the Qur'an are a display of justice of equality. By comparing them to the rights and laws found in France and England pertaining women, it clearly apparent that the Shari'ah of Islam has given married women (whom the westerners claim that the Muslims do not treat fairly) those rights of inheritance of which there is no comparison in our laws."

Voltaire writes in his discussion regarding the philosophy of the Qur'an in his book, Dictionary of Philosophy:

"We are not unaware that the Qur'an mentions the honour and respect that a woman has been given by her natural disposition. However, the Qur'an seems different from the Torah in this respect that it does not consider her natural weakness to be a 'divine punishment' just as it is in the Book of Genesis (3:16). It is incorrect and deceiving to attribute towards a great legislator like Muhammad the notion of injustice towards women. "